

SENATE/HOUSE FILE _____
BY (PROPOSED OFFICE OF
OMBUDSMAN BILL)

A BILL FOR

1 An Act relating to investigations conducted by the office of
2 ombudsman and professional licensing boards.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 2C.9, subsection 4, Code 2020, is amended
2 to read as follows:

3 4. Request and receive from each agency assistance and
4 information as necessary in the performance of the duties of
5 the office.

6 a. Notwithstanding section 22.7, ~~pursuant to an~~
7 ~~investigation~~ the ombudsman may, pursuant to an investigation,
8 examine any and all records and documents of any agency unless
9 its custodian demonstrates that the examination would violate
10 federal law or result in the denial of federal funds to the
11 agency.

12 b. (1) Confidential records and documents provided to the
13 ombudsman by other agencies shall continue to maintain their
14 confidential status. The ombudsman is subject to the same
15 policies and penalties regarding the confidentiality of the
16 record or document as an employee of the agency.

17 (2) Disclosure of information that is subject to the
18 attorney-client privilege or attorney work-product privilege
19 by an agency to the ombudsman does not waive the privilege
20 as to any other person. The ombudsman shall not disclose
21 privileged information provided under this subparagraph unless
22 the information is evidence of an act of an agency that the
23 ombudsman reasonably believes is criminal or as otherwise
24 provided by this paragraph.

25 (3) Information otherwise maintained as confidential as
26 provided by this section may be disclosed by the ombudsman for
27 any of the following reasons:

28 (a) As necessary to complete an investigation.

29 (b) As necessary to state and publish conclusions,
30 recommendations, and suggestions in accordance with sections
31 2C.16 and 2C.17.

32 (c) To the extent the ombudsman is required by law to report
33 the information or to testify in court.

34 c. The ombudsman may enter and inspect premises within
35 any agency's control and may observe proceedings and attend

1 hearings, with the consent of the interested party, including
2 those held under a provision of confidentiality, conducted by
3 any agency unless the agency demonstrates that the attendance
4 or observation would violate federal law or result in the
5 denial of federal funds to that agency. ~~This subsection does~~
6 ~~not permit the examination of records or access to hearings~~
7 ~~and proceedings which are the work product of an attorney~~
8 ~~under section 22.7, subsection 4, or which are privileged~~
9 ~~communications under section 622.10.~~

10 Sec. 2. Section 2C.11A, Code 2020, is amended to read as
11 follows:

12 **2C.11A Subjects for investigations — disclosures of**
13 **information.**

14 The office of ombudsman shall either investigate or decline
15 to investigate a complaint filed by an employee who is not a
16 merit system employee or an employee covered by a collective
17 bargaining agreement and who alleges that adverse employment
18 action has been taken against the employee in violation of
19 section 70A.28, subsection 2. A complaint filed pursuant
20 to this section shall be made within thirty calendar days
21 following the effective date of the adverse employment action.
22 The ombudsman shall ~~investigate~~ examine the matter and shall,
23 in writing, either decline to investigate the matter or issue
24 findings a report following an investigation relative to the
25 complaint in an expeditious manner. The ombudsman's report or
26 written decision declining to investigate shall be provided to
27 the employee and the agency or officer who is the subject of
28 the allegations.

29 Sec. 3. Section 2C.21, Code 2020, is amended to read as
30 follows:

31 **2C.21 Witnesses.**

32 A person required by the ombudsman to provide information
33 shall be paid the same fees and travel allowances as are
34 extended to witnesses whose attendance has been required in
35 the district courts of this state. Officers and employees of

1 an agency shall not be entitled to such fees and allowances.
2 A person who, with or without service of compulsory process,
3 provides oral or documentary information requested by the
4 ombudsman shall be ~~accorded the same privileges and immunities~~
5 ~~as are extended to witnesses in the courts of this state, and~~
6 ~~shall also be~~ entitled to be accompanied and advised by counsel
7 while being questioned.

8 Sec. 4. Section 70A.28, subsection 6, Code 2020, is amended
9 to read as follows:

10 6. Subsection 2 may also be enforced by an employee through
11 an administrative action pursuant to the requirements of this
12 subsection if the employee is not a merit system employee or
13 an employee covered by a collective bargaining agreement. An
14 employee eligible to pursue an administrative action pursuant
15 to this subsection who is discharged, suspended, demoted,
16 or otherwise receives a reduction in pay and who believes
17 the adverse employment action was taken as a result of the
18 employee's disclosure of information that was authorized
19 pursuant to subsection 2, may file an appeal of the adverse
20 employment action with the public employment relations
21 board within thirty calendar days following the later of the
22 effective date of the action or the date a finding written
23 decision declining to investigate or report is issued to
24 the employee by the office of ombudsman pursuant to section
25 2C.11A. The findings report issued by the ombudsman may be
26 introduced as evidence before the public employment relations
27 board. The employee has the right to a hearing closed to the
28 public, but may request a public hearing. The hearing shall
29 otherwise be conducted in accordance with the rules of the
30 public employment relations board and the Iowa administrative
31 procedure Act, chapter 17A. If the public employment relations
32 board finds that the action taken in regard to the employee was
33 in violation of subsection 2, the employee may be reinstated
34 without loss of pay or benefits for the elapsed period, or the
35 public employment relations board may provide other appropriate

1 remedies. Decisions by the public employment relations board
2 constitute final agency action.

3 Sec. 5. Section 272C.3, subsection 1, paragraph d, Code
4 2020, is amended to read as follows:

5 d. Determine in any case whether an investigation, or
6 further investigation, or a disciplinary proceeding is
7 warranted. Notwithstanding the provisions of chapter 17A,
8 a determination by a licensing board that an investigation
9 is not warranted or that an investigation should be closed
10 without initiating a disciplinary proceeding is not subject to
11 judicial review pursuant to section 17A.19. Notwithstanding
12 any other provision of law, if a board determines that there
13 is no probable cause to believe that an asserted violation has
14 occurred, the complaint shall be returned to the complainant
15 with a statement specifying the reasons for rejection
16 sufficient to enable the complainant to review the agency's
17 determination.

18 EXPLANATION

19 The inclusion of this explanation does not constitute agreement with
20 the explanation's substance by the members of the general assembly.

21 This bill concerns investigations conducted by the office of
22 ombudsman and by professional licensing boards.

23 Code section 2C.9, relating to the ombudsman's powers,
24 is amended related to the confidentiality of documents and
25 information received by the office of ombudsman from an
26 agency. The Code section is amended to provide that disclosure
27 of information subject to the attorney-client or attorney
28 work-product privilege by an agency to the ombudsman does
29 not waive the privilege as to any other person, and further
30 provides that the ombudsman shall not disclose the information
31 unless it is believed to be evidence of a criminal act or
32 is otherwise authorized to be disclosed. The Code section
33 is also amended to provide that confidential information may
34 be disclosed by the ombudsman as necessary to complete an
35 investigation, as necessary to publish recommendations to an

1 agency or conclusions as authorized by Code sections 2C.16 and
2 2C.17, or to the extent the ombudsman is required by law to
3 report the information or testify in court.

4 Code section 2C.11A, concerning certain whistleblower
5 complaints filed by an employee that are subject to
6 investigation by the office of ombudsman, is amended to
7 provide that the office of ombudsman may, in writing, decline
8 to investigate the complaint and that the ombudsman's report
9 following an investigation or written decision to decline to
10 investigate shall be provided to both the employee and agency
11 or officer who is the subject of the allegations. Code section
12 70A.28, concerning whistleblower complaints, is amended to
13 conform to the changes made to Code section 2C.11A.

14 Code section 2C.21, concerning witnesses, is amended to
15 provide that the ombudsman is not required to afford a person
16 who provides oral or documentary evidence requested by the
17 ombudsman the same rights as are extended to witnesses in
18 court.

19 Code section 272C.3, relating to investigations by
20 professional licensing boards, is amended to require a board
21 that determines that no probable cause exists for an asserted
22 violation to return the complaint to the complainant with a
23 statement specifying the reason for rejection of the complaint.